



U.S. Department of Justice

United States Attorney
Southern District of New York

The Silvio J. Mollo Building
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New York, New York 10007

July 11, 2017

BY CM/ECF

Catherine O'Hagan Wolfe, Clerk of Court
United States Court of Appeals for the Second Circuit
Thurgood Marshall U.S. Courthouse
40 Foley Square
New York, New York 10007

**Re: *United States v. Sheldon Silver*
Docket No. 16-1615**

Dear Ms. Wolfe:

The Government respectfully submits this letter, pursuant to Rule 28(j) of the Federal Rules of Appellate Procedure, to address this Court's recent decision in *United States v. Boyland*, No. 15-3118 (July 10, 2017), which held that the definition of "official act" set forth in *McDonnell v. United States*, 136 S. Ct. 2355 (2016), does not apply to violations of 18 U.S.C. § 666. Slip op. at 21-22.

In addition, with respect to the honest services fraud and Hobbs Act extortion counts charged in *Boyland*, this Court concluded that, although the jury instructions were erroneous in light of *McDonnell*, the error did not affect Boyland's substantial rights, at least in part because the ultimate success of the charged scheme would "require the formal exercise of government power," such as the issuance of city and state permits and approvals. Slip op. at 22-23.¹

¹ The instructions found to be erroneous in *Boyland* went considerably further than the instructions challenged in this case, because in *Boyland* the jury was instructed that "official acts" include merely "contacting or lobbying other governmental agencies, and advocating for constituents." *Boyland*, slip op. at 14. That instruction was not present in this case.

cc: Defense Counsel (by CM/ECF)